

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, applicants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 02-1445.

ADDITIONAL FEE

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REMARKS

This application relates to the discovery that a particular fungicide known for agricultural use is especially effective in protecting wood products.

The Examiner is thanked for the courtesy of an interview recently accorded applicants' attorney. Pursuant thereto claims 7 and 10 are amended hereinabove.

The objection to claims 10 and 11 under 35 U.S.C. 112 is not followed. Indeed they extend to products containing the specified ingredient. You might wish to purchase treated lumber for your patio. These claims cover such treated lumber.

More important is the rejection over prior art, viz. under 35 U.S.C. § 103 as being unpatentable over Schaub (A), of

record in view of Ludwig et al (A') and European Patent 0393746 (L'), newly cited.

Indeed the compound of claim 7 is a known fungicide. The point, however, is that not all agricultural fungicides are good for treating wood, for example, and not all fungicides good in wood are comparably useful in agriculture.

This is shown in the accompanying declaration. It shows that two known agricultural azole fungicides which bear a certain structural similarity perform markedly differently against fungi which attack wood. What it means is that you cannot extrapolate from agricultural utility to wood utility. Not only are the fungi different but the requirements are different as well.

In farming you would like to kill the fungus and you would be happy if the fungicide acted quickly and then quickly decomposed. For treating wood, you want long duration, don't care if it's fast acting and you want extremely slow decomposition.

Therefore, the fact that the instant fungicide is of limited effectiveness agriculturally teaches you nothing about its usefulness in lumber. Surprisingly, for that purpose it is quite good.

In terms of the Examiner's statement on page 4, there

would be limited motivation to use the instant compound for any fungicidal purpose, no motivation at all to use it for the instant purpose. The fact that some other fungicides are useful in wood suggests nothing about this fungicide being thus useful.

Favorable action is accordingly earnestly solicited.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on 10/17/94.

Date 10/17/94 BY Leonard Horn  
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